

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

SERGIO CURIEL, SR.,

Defendant.

CR. NO. 2:05-0113-01 WBS

MEMORANDUM AND ORDER RE: MOTION  
TO REDUCE SENTENCE PURSUANT TO  
18 U.S.C. § 3582(c) (2)

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Before the court are defendant Sergio Curiel, Sr.'s motions to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2). (Docket Nos. 299, 300, 303.)

I. Factual and Procedural History

On July 28, 2005, the grand jury returned its Superseding Indictment charging defendant with conspiracy to distribute and possess methamphetamine. (Docket No. 71.) Defendant pleaded guilty pursuant to a written plea agreement with the government filed on September 15, 2006. (Docket No.

1 155.) In the plea agreement, defendant agreed that the amount of  
2 drugs involved in the underlying conspiracy exceeded 1.5  
3 kilograms of actual methamphetamine. Id. at 2. Judge Karlton  
4 held a sentencing hearing on April 17, 2007. (Docket No. 233.)  
5 Judge Karlton adopted the presentence report, which set forth  
6 defendant's base offense level of 38, a total offense level of  
7 41, and a criminal history category of II. (See Sentencing Hr'g  
8 Tr. 7 (Docket No. 257); PSR ¶¶ 38-55.) Under the Sentencing  
9 Guidelines, the resulting guideline range was 360 months to life  
10 in prison. PSR ¶ 74. Based on the government's motion,  
11 defendant received a downward departure from the low end of the  
12 applicable range and was ultimately sentenced to 240 months'  
13 imprisonment, 33 percent below the bottom of the guideline range.  
14 (Sentencing Hr'g Tr. 7, 10.)

15 In 2014, the U.S. Sentencing Commission issued  
16 Amendment 782 to the U.S. Sentencing Guidelines ("U.S.S.G."),  
17 reducing guidelines ranges for certain drug offenses by two  
18 offense levels. In accordance with Congress's directive in 28  
19 U.S.C. § 994(u), the Commission further determined that Amendment  
20 782 should have retroactive effect for those currently serving  
21 terms of imprisonment. See U.S.S.G. App. C, Amend. 782.

22 On February 17, 2015, July 7, 2016, and July 11, 2016,  
23 defendant filed successive motions for a reduction of his  
24 sentence under 18 U.S.C. § 3582(c)(2). After the filing of the  
25 motions, the court appointed counsel for defendant, who filed a  
26 reply in support of the motions. (See Docket No. 311.)

27 Defendant argues that Amendment 782 retroactively  
28 reduces his total offense level to 39, with an applicable amended

1 guideline range of 292 to 365 months. (Def.'s Mot. Reply 2.)  
2 With a further reduction comparable to the 33 percent reduction  
3 he originally received, defendant requests a total sentence  
4 reduction to 195 months.<sup>1</sup> (Id.)

5 **II. Discussion**

6 Section 3582(c)(2) provides:

7 The court may not modify a term of imprisonment once  
8 it has been imposed except that . . . in the case of a  
9 defendant who has been sentenced to a term of  
10 imprisonment based on a sentencing range that has  
11 subsequently been lowered by the Sentencing Commission  
12 pursuant to 28 U.S.C. 994(o), . . . the court may  
13 reduce the term of imprisonment, after considering the  
factors set forth in section 3553(a) to the extent  
that they are applicable, if such a reduction is  
consistent with applicable policy statements issued by  
the Sentencing Commission.

14 18 U.S.C. § 3582(c)(2). "Section 3582(c)(2) instructs a district  
15 court to 'conside[r] the factors set forth in section 3553(a) to  
16 the extent that they are applicable,' but it authorizes a  
17 reduction on that basis only 'if such a reduction is consistent  
18 with applicable policy statements issued by the Sentencing  
19 Commission'--namely, § 1B1.10." Dillon v. United States, 560  
20 U.S. 817, 826 (2010). Courts have thus interpreted the statute  
21 to establish a "two-step inquiry." See id. at 826-27. "A court  
22 must first determine that a reduction is consistent with § 1B1.10  
23 before it may consider whether the authorized reduction is

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24 <sup>1</sup> Defendant initially requested that his sentence be reduced  
25 to 168 months, and then requested that his sentence be reduced to  
26 188 months. His appointed counsel then asserted in reply to the  
27 government's opposition that the proper sentence under the  
amended guidelines would be 195 months. Defendant also initially  
28 referenced Johnson v. United States, 135 S. Ct. 2551 (2015), but  
he did not provide any argument how Johnson might apply, and at  
any rate, Johnson appears inapplicable to this case.

1 warranted, either in whole or in part, according to the factors  
2 set forth in § 3553(a)." Id. at 826.

3                 Here, the government contends that defendant is not  
4 eligible for a sentence reduction because Amendment 782 does not  
5 lower the applicable guidelines range. (Gov't Opp'n 3-4 (citing,  
6 inter alia, U.S.S.G. § 1B1.10 ("[A] reduction in the defendant's  
7 term of imprisonment . . . is not authorized under 18 U.S.C. §  
8 3582(c) (2) if . . . [the amendment] does not have the effect of  
9 lowering the defendant's applicable guideline range."))).  
10 Specifically, the government argues that because the Presentence  
11 Report found that defendant was responsible for 5,236.8 grams of  
12 actual methamphetamine, his base offense level is still 38, and  
13 after the applicable firearms and leadership enhancements, his  
14 total offense level is still 41, which along with his criminal  
15 history category II, results in a 360 months to life sentence,  
16 the same guidelines range he faced before Amendment 782.

17                 However, as noted by defendant, the parties stipulated  
18 in the plea agreement that defendant was responsible only for  
19 "more than 1.5 kilograms" of actual methamphetamine, not more  
20 than 5 kilograms. The PSR states that the conspiracy involved  
21 more than five kilograms of methamphetamine, but Judge Karlton  
22 did not make any specific finding that the defendant was  
23 responsible for that entire quantity. As "relevant conduct is  
24 not necessarily the same for every participant" in a conspiracy,  
25 U.S.S.G. § 1B1.3, comment 3(B), Judge Karlton's adoption of the  
26 PSR does not constitute a factual finding that the defendant was  
27 specifically responsible for more than five kilograms of  
28 methamphetamine.

1           Because the Supreme Court has stated that § 3582(c)(2)  
2 authorizes "only a limited adjustment to an otherwise final  
3 sentence and not a plenary resentencing proceeding," Dillon, 560  
4 U.S. at 826, this court is not authorized to make the necessary  
5 factual finding that defendant was responsible for more than five  
6 kilograms of methamphetamine. Thus, in considering defendant's §  
7 3582 motion, the court relies only on the "more than 1.5  
8 kilograms" quantity of actual methamphetamine stipulated to by  
9 the defendant in the plea agreement.

10           Under the amended guidelines, the base offense level  
11 for at least 1.5 kilograms but less than 4.5 kilograms of actual  
12 methamphetamine is now 36. With the applicable enhancements,  
13 defendant's new total offense level of 39, along with his  
14 criminal history category II, results in an amended guideline  
15 range of 292 to 365 months' imprisonment. Thus, Amendment 782  
16 results in a different guidelines range and defendant is eligible  
17 for a sentence reduction under step one of the Dillon inquiry.

18           Under step two of Dillon, the court considers the  
19 applicable § 3553(a) factors and determines whether the reduction  
20 is appropriate under the particular circumstances of the case, in  
21 light of the Sentencing Commission's policy statements. The  
22 government provides no argument on this issue, and the court sees  
23 no reason to deny defendant a reduction in his sentence.  
24 Accordingly, the court will grant defendant a sentence  
25 modification pursuant to Amendment 782 with immediate effect,  
26 consistent with U.S.S.G. § 1B1.10. The court will apply a 33%  
27 reduction to the low end of the guidelines range in keeping with  
28 Judge Karlton's original sentence.

1 IT IS THEREFORE ORDERED that defendant's motion for  
2 reduction of sentence pursuant to § 3582(c) (2) be, and the same  
3 hereby is, GRANTED. Defendant's term of imprisonment shall be  
4 reduced to **195 months**.

5 Dated: November 16, 2016



6 **WILLIAM B. SHUBB**  
7 UNITED STATES DISTRICT JUDGE

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